

**COUNTY OF BERGEN
BOROUGH OF PARAMUS
ORDINANCE 19-16**

**ORDINANCE REGULATING
RETAIL PLASTIC BAGS AND POLYSTYRENE FOAM**

The Paramus Code is hereby amended to contain a new chapter, Chapter 453, titled “Retail Plastic Bags and Polystyrene Foam.”

Section 453-1. *Legislative findings and authority.*

A. On average, one person uses 500 single-use disposable plastic bags per year, 4 billion single-use shopping bags are used annually in New Jersey, and 102 billion are used nationwide; and,

B. In the ocean, plastic bags are broken down into tiny pieces that cannot be digested by marine life. Micro-plastic pollution in oceans can accumulate toxic chemicals, harms marine life, and enters the human food chain.

C. 2 million barrels of oil are used annually to make the plastic bags that Americans use.

D. Approximately less than 1 percent (1%) of plastic bags are recycled. Most plastic bags are made from polyethylene, which takes centuries to degrade. Each ton of recycled plastic bags saves the energy equivalent of 11 barrels of oil.

E. Paramus desires to reduce the use of single-use plastic bags by all residents and merchants.

F. Polystyrene foam (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) contains styrene, a known neurotoxin and suspected carcinogen, which can leach from polystyrene foam disposable food service ware and packaging into food and drink, which potentially threatens human health.

G. The general public is not typically warned of any potential hazard with polystyrene foam.

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H. Expanded polystyrene foam, the type used in most disposable food service products, cannot be recycled and takes 500 years to decompose.

I. Billions of polystyrene foam cups are used yearly in convenience stores, restaurants and lunchrooms ending up in landfills. Polystyrene foam and polystyrene foam products fill up approximately thirty percent (30%) of landfill space in America.

J. If not disposed of properly, polystyrene foam products and plastic bags are blown into local woods and streams, affecting wildlife and marine life. According to a 2016 study by NY/NJ Baykeeper, polystyrene foam makes up thirty-eight percent (38%) of all plastic pollution in the Hackensack River.

K. Paramus residents understand that reusable bags consume far less energy and natural resources than single use plastic carry-out bags and recyclable paper carry-out bags, when used as intended, and that polystyrene foam products are easily replaceable with recyclable or compostable alternatives such as recycled paper cups.

L. Pursuant to N.J.S.A. 40:48-2, a municipality in New Jersey may enact such ordinances “as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants.” Regulating the retail use of plastic bags and polystyrene foam will preserve the current and future public health, safety, and welfare of Paramus by protecting natural resources and encouraging environmental sustainability.

Section 453-2. *Definitions.*

The following definitions apply to this chapter:

A. The term “customer” means any person purchasing goods or services.

B. The term “operator” means the person in control of, or having the responsibility for, the operation of a retail establishment or retail food vendor, which may include, but is not limited to, the owner of the retail establishment or retail food vendor.

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C. The term “person” means any natural person, firm, corporation, partnership, trust, joint stock company, association, or other organization or group however organized.

D. The term “single use plastic carry-out bag” means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or plant sources, that is provided by an operator of a retail establishment or retail food vendor to a customer at the point of sale. The term includes compostable and biodegradable bags but specifically exempts the following from the category of “Single Use Plastic Carry-out Bags”: reusable bags, produce bags, and product bags.

E. The term “reusable bag” means any sewn bag made of cloth or other washable fabric with stitched handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:

(1) it is machine-washable or is made from a material that can be cleaned or disinfected;

(2) it does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations; and

(3) it is affixed with a statement that the bag is a reusable bag, as well as recycling instructions if the bag is recyclable.

F. The term “produce bag” or “product bag” means a very thin bag without handles used exclusively to carry produce, meats, or other items to the point of sale inside a retail establishment or, for reasons of public health and safety, to prevent such items from coming into direct contact with other purchased items:

(1) “produce bags” are bags to:

a. package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;

b. contain or wrap frozen foods, meat, or fish, whether packaged or not;

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c. contain or wrap flowers, potted plants, or other items where dampness may be an issue; contain unwrapped prepared foods or bakery goods; or

d. pharmacy prescription bags.

(2) “product bags” are newspaper bags, door-hanger bags, laundry, and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, yard waste bags, or pet waste bags.

G. The term “compliant bag” means recyclable paper carry-out bags and reusable bags.

H. The term “recyclable paper carry-out bag” means a paper bag that meets all of the following minimum requirements:

(1) it is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material;

(2) it can be composted; and

(3) it displays the words “recyclable” and/or “reusable” in a highly visible manner on the outside of the bag.

I. The term “post-consumer recycled material” means a bag constructed of a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle. “Post-consumer recycled material” does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

J. The term “recyclable” means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of reusing the altered, incinerated, converted, or otherwise thermally destroyed solid waste generated therefrom.

K. The term “retail establishment” means any store or commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing,

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food, and personal items directly to the customer and is located and/or doing business within the geographical limits of Paramus. Retail establishments include: a business establishment that generates a sales or use-tax; a drug store, pharmacy, supermarket, grocery store, convenience food store, food mall, or other commercial entity engaged in the retail sale of a limited line of goods that include milk, bread, soda, and snack foods; a public eating establishment (i.e., a restaurant, take-out food establishment, or any other business that prepares and sells prepared food to be eaten on or off its premises); and a business establishment that sells clothing, a hardware store, or any other non-perishable goods. "Retail establishment" does not include non-profit charitable re-users as defined in Section 501(c)(3) of the Internal Revenue Code, or a distinct operating unit or division of the charitable organization that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

L. The term "retail food vendor" means all sales outlets, stores, shops, restaurants, parts of retail establishments, or other places of business located and/or doing business in Paramus that receive revenue through the sales or conveyances of foods directly to the ultimate customer, which foods are predominantly contained, wrapped or held in or on packaging. "Retail food vendors" shall include, but not be limited to, any establishment where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including but not limited to any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short order cafe, fast-food outlet, delicatessen, luncheonette, grill, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, inn, roadside stand, takeout prepared food place, industrial feeding establishment, catering kitchen, grocery store, public food market, food stand, cart, pushcart, vehicle, mobile unit or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere and any other establishment or operation, including homes where food is processed, prepared, stored, served or provided to the public for charge. This definition includes any department or unit of the Borough of Paramus and the government of Paramus shall comply with this ordinance to the same extent as any other "retail food vendor."

M. The term "packaging" shall include disposable food service ware and packaging, reusable food service ware and packaging, and degradable packaging.

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N. The term “disposable food service ware and packaging” means all food-related wrappings, including but not limited to bags, sacks, wrappings, containers, closures, bowls, plates, trays, cartons, cups, lids, or drinking utensils intended for use within Paramus, but excluding straws and eating utensils, that are intended by the manufacturer to be used once for eating or drinking or that are generally recognized by the public as items to be discarded after one use.

O. The term “reusable food service ware and packaging” means all food-related wrappings, containers, service items, and utensils designed for multiple use including but not limited to straws, napkins, cutlery, utensils, baskets, plates, bowls, ramekins, trays, mugs, glasses, condiment dispensers, to-go containers, and cups or other containers provided as part of a loyalty or discount program.

P. The term “degradable packaging” means packaging made of cellulose-based substances or other substances which are capable of being readily attached, decomposed, assimilated, and/or otherwise completely oxidized or broken down into its constituent parts by bacteria, natural biological organisms, carbonaceous soil material, water, carbon dioxide; or in the alternative capable of otherwise degrading when exposed to ultraviolet light or other natural processes beginning within a twelve-month period from the date of manufacture or exposure to the environment.

Q. The term “food” shall include both food and drink, raw food, and prepared food, whether such food is provided free of charge or sold, unless otherwise stated.

R. The term “raw food” means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise sold on the food vendor's premises or within Paramus. For the purposes of this ordinance, raw food includes meat, fish, poultry, eggs, and vegetables on trays made, in whole or in part, from polystyrene foam either as separate items or as part of the sale to customers from a refrigerator case or similar retail appliance.

S. The term “prepared food” means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the food vendor's premises or within Paramus. For the purposes of this ordinance, prepared food includes food which may be eaten on or off the premises, including “take-out food.”

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T. The term “polystyrene foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term “polystyrene foam” includes “polyethylene foam,” which is a closed-cell foam made of millions of tiny bubbles sealed off from each other.

U. The term “compostable” means all materials in the product or package are capable of undergoing biological decomposition or otherwise becoming part of a usable compost (e.g., soil conditioning material or mulch) in a safe and timely manner in an appropriate composting program or facility. Compostable disposable food service ware and packaging includes ASTM-Standard bio-plastics or plastic-like products that are clearly labeled, such that any compost collector and processor can easily distinguish the ASTM-Standard compostable plastic from non ASTM-Standard compostable plastic.

V. The term “ASTM-Standard” means meeting the standards of the American Society for Testing and Materials International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

Section 453-3. *Prohibition on Single-Use Plastic Carry-Out Bags.*

No retail establishment shall provide to any customer a single use plastic carry-out bag, as defined in section 453-2 above. This prohibition applies to bags provided for the purpose of carrying goods away from the point of sale and does not apply to: (a) product bags; or (b) or to produce bags used to carry produce within the retail establishment to the point of sale. The prohibition applies to single use plastic carry-out bags used for take-out deliveries from retail establishments within Paramus. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

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Section 453-4. *Fees for Compliant Bags; Use of Reusable Bags Encouraged.*

A. All retail establishments shall make available to customers compliant bags, as defined herein, for the purpose of carrying goods or other materials away from the point of sale.

B. Nothing in this ordinance prohibits customers from using bags of any type that they choose to bring to retail establishments themselves, in lieu of using bags available for a fee from the retail establishment, or from carrying away goods that are not placed in a bag.

C. All retail establishments must provide customers with compliant bags, upon request, if customers fail to bring their own bags, in accordance with the fee structure set forth in this section.

G. A retail establishment may choose, in its discretion, to provide a credit to customers that choose to bring their own bags.

H. Each retail establishment shall be strongly encouraged to educate its staff to promote the use of reusable bags and to post signs encouraging customers to use reusable bags rather than recyclable paper carry-out bags.

I. A retail establishment is strongly encouraged to educate on plastic bag and plastic film recycling and offer a take back program.

Section 453-5. *Potential Exemptions from Section 453-3 and 453-4.*

A. The Governing Body, in consultation with the Paramus Environmental Commission, may approve a request for an exemption from the requirements of this ordinance.

B. Exemption decisions are effective upon approval and are final and not appealable, except otherwise required by law.

C. Any specific requirement of this ordinance waived or exempted per section 453-5 B. shall be waived or exempted for a period of not more than one year. A person granted an exemption must re-apply prior to the end of the one-year exemption

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period. The Paramus Environmental Commission shall be consulted on all such applications.

D. The fee for exemption requests is \$100.

Section 453-6. Polystyrene Foam Prohibited At Point of Sale for Food Products.

A. No retail establishment or retail food vendor located and/or doing business in Paramus shall sell or convey prepared food directly to the ultimate customer within Paramus unless such food is placed, wrapped, or packaged in degradable packaging at the conclusion of the sales transaction. For the purposes of this section, “conclusion of the sales transaction” shall be the point of time at which the possession of the food product passes from the retail food vendor to the ultimate customer, and the conclusion of the sales transaction need not require the actual payment of consideration for such food product; provided, however, payment is expected from the ultimate customer prior to the customer exiting the premises of the retail food vendor.

B. No retail establishment or retail food vendor located and/or doing business in Paramus shall sell, offer for sale, give, provide, or otherwise distribute prepared food and/or raw food in disposable food service ware and packaging to any customer within Paramus if said packaging is composed of polystyrene foam. Straws and utensils are exempt from this section.

C. All Paramus facilities, Paramus-managed concessions, Borough of Paramus sponsored events, and Paramus permitted events are prohibited from using polystyrene foam disposable food service ware and packaging. This prohibition shall apply to the event organizers, agents of the event organizers, event food vendors and any other party, including nonprofit organizations, who enter into an agreement with one or more of the co-sponsors of the event to distribute prepared food at the event or otherwise provide an event-related service.

D. Borough of Paramus departments are prohibited from purchasing polystyrene foam disposable food service ware and packaging.

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Section 453-7. Required recyclable or compostable disposable food service ware and packaging.

A. All retail food vendors using any disposable food service ware and packaging shall use recyclable or compostable disposable food service ware and packaging unless it can be shown that a recyclable or compostable product is not available for a specific application.

B. All disposable food service ware and packaging sold, offered for sale, or otherwise distributed within Paramus, shall be recyclable or compostable.

C. Retail food vendors are strongly encouraged to use reusable food service ware and packaging.

D. Nothing in this ordinance prohibits customers from using reusable food service ware and packaging of any type that they choose to bring to retail food vendors themselves, in lieu of using disposable food service ware and packaging.

E. All Paramus Facilities, Paramus-managed concessions, Paramus sponsored events, and Paramus permitted events using any disposable food service ware and packaging shall use recyclable or compostable disposable food service ware and packaging.

F. Paramus departments using any disposable food service ware and packaging shall use recyclable or compostable disposable food service ware and packaging.

Section 453-8. Exemption from Sections 453-6 and 453-7.

A. Sections 453-6 and 453-7 shall not apply to the following items:

(1) Any flexible transparent covering for raw food (including uncooked or raw meat, poultry, raw fish, hard cheese, cold cuts, fruit and vegetable produce), baked goods or bread.

(2) Any disposable food service ware and packaging used at hospitals or nursing homes.

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(3) Any plastic covers, covering materials, food containers, lids, eating utensils, straws or other materials that are not made of polystyrene foam.

(4) Situations where compliance with the requirements of this ordinance would deprive a person of a legally protected right.

B. The Paramus borough administrator, in consultation with the Paramus Environmental Commission, may exempt an item or type of packaging from the requirements of this section, upon a showing that the item or type has no acceptable equivalent and that imposing the requirements on that item or type would cause undue hardship. Any such exemption or denial of an exemption must be submitted to the Governing Body within 14 days and the Governing Body may overrule it.

(1) In order to be considered for such exemption, the vendor shall provide the following documentation:

(a) A list of suppliers contacted and statements signed by said suppliers listing the items that can be supplied which clearly indicates that the item or type of packaging has no acceptable equivalent or substitute; and/or

(b) A statement signed by said retail food vendor indicating that it is required to purchase disposable food service ware and packaging pursuant to a contract entered into prior to September 1, 2019, and said supplier is unable to supply an item or type that has no acceptable equivalent. Said statement shall be accompanied by a certified copy of the contract in question, and shall indicate the expiration date of said contract.

C. Any specific requirement of this ordinance waived or exempted per section 453-8 B. shall be waived or exempted for a period of not more than one year. A person granted an exemption must re-apply prior to the end of the one-year exemption period and demonstrate that the item or type still has no acceptable equivalent or substitute and that imposing the requirements on that item or type would continue to cause undue hardship if the person wishes to have the exemption extended. The Paramus Environmental Commission shall be consulted on all such applications.

D. The fee for exemption requests is \$100.

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Section 453-9. *Enforcement and Penalties.*

A. The health officer and the quality of life officer have authority to enforce this ordinance, including, but not limited to, investigating violations, inspecting any retail establishment or retail food vendor's premises to verify compliance, and issuing fines.

B. Any retail establishment or retail food vendor that violates or fails to comply with any of the requirements of this ordinance after an initial written warning notice has been issued for that violation shall be liable for a subsequent infraction.

C. If a retail establishment or retail food vendor has subsequent violations of this ordinance after the issuance of an initial written warning notice of a violation, the following penalties will be imposed and shall be payable by the operator of the retail establishment or retail food vendor:

(1) a fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;

(2) a fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; or

(3) a fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.

D. A fine shall be imposed for each day a violation occurs or is allowed to continue.

Section 453-10. *Effective Date, Ramp-Up Period, and Guidance to Businesses.*

A. This ordinance shall take effect January 1, 2020.

B. The period from passage and publication to effective date shall be known as the "ramp-up period." During the ramp-up period, the Paramus Environmental Commission and other Paramus officials shall hold community events and informational sessions to aid the public and businesses in preparing to comply with

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the ordinance. During the ramp-up period, Paramus (through the Paramus Environmental Commission or otherwise) shall provide for “compliant bag” giveaways to members of the public (not in bulk to businesses). The total appropriation for these giveaways to members of the public during the ramp-up period shall not exceed \$1,000 unless increased by the Governing Body.

C. As of September 15, 2019, the Paramus Environmental Commission shall display in a prominent place at Paramus Borough Hall the types of materials permitted and prohibited by this ordinance, with easily understood labels. To the extent practicable, Paramus shall codify an addendum to this ordinance with pictures and labels of permitted and prohibited materials with as much identifying information as possible in order to make this ordinance as easily understood as possible.

Section 453-11. *Construction of this ordinance.*

A. Nothing in this ordinance is intended to create any requirement, power, or duty that is in conflict with any federal or state law and shall not be construed as such.

B. All ordinances or parts thereof in conflict or inconsistent with this ordinance are repealed, but only to the extent of such conflict or inconsistency.

C. The provisions of this ordinance are severable; if any section, subsection, sentence, clause, or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, and phrases of this ordinance, but shall remain in effect.

Attest:

Approved:

ANNEMARIE KRUSZNIS, RMC
Borough Clerk

RICHARD A. LaBARBIERA
Mayor

Introduced: May 21, 2019
Adopted: August 21, 2019